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**From:**

**Sent:** Monday, October 27, 2008 3:34:46 PM

**To:**

**Cc:**

**Subject:** RE: Backup Withholding

Backup withholding under section 3406 only applies if the payment is a reportable payment as defined in 3406(b) - generally, interest, dividends, broker payments, and certain other reportable payments. In this case the issue is whether the payment is reportable under section 6041; if so, it is subject to backup withholding if a condition for backup withholding exists (if the payee failed to furnish a correct TIN). To be reportable under section 6041 the payment must constitute fixed or determinable income. Therefore, payments which are not income, such as those excludable under sec. 104(a)(2), are not reportable under section 6041 and backup withholding does not apply.

Has it been determined that section 104(a)(2) applies to these payments?